Notice,[117] the definition of what is the same market for purposes of applying the EDP attribution standard is resolved in the companion television local ownership proceeding.[118]

54. Program suppliers. In the *Attribution Further Notice*, we invited comment on whether we should include program suppliers under the "equity/debt plus" attribution test to address our concern and that of some commenters that program suppliers such as networks could use nonattributable interests to exert influence over critical station decisions, including programming and affiliation choices. We cited recent transactions involving program suppliers where it appeared that nonattributable investors could be granted rights over licensee decisions that might afford them significant influence over the licensee. We invited comment as to whether we should encompass radio and television time brokerage agreements or LMAs under the proposed "equity/debt plus" attribution approach, if we specify program suppliers as a triggering category.[119]

55. We will include major program suppliers in the EDP rule. We will define the "major program suppliers" that are subject to this new attribution standard to include entities that provide more than 15 percent of a station's total weekly broadcast programming hours. We believe that the 15 percent standard should apply to all providers of programming to stations, including those that provide programming pursuant to inter-market LMAs.[120] As noted above, the EDP rule would apply only to the major program supplier's investments in a station to which it supplies the requisite amount of programming. In addition, where a person or entity has an attributable interest in a major program supplier, that person or entity will be deemed to be a major program supplier for purposes of applying the EDP rule.

56. We have decided to define a major program supplier subject to the EDP rule as all programming entities that supply over 15 percent of a station's weekly programming for the following reasons. We agree with those commenters that argue that not every program provider can exert sufficient influence such that its otherwise non-attributable financial interests in a licensee should potentially be subject to attribution. We note the views of commenters that the major networks should be subject to the EDP rule and those that argue for including providers of substantial amounts of programming to a station. Those entities that provide substantial quantities of programming to a licensee are, we believe, in a strong position to exert significant influence over that licensee, particularly when the programming connection is coupled with the requisite financial investment, such that the EDP rule should be triggered. We believe that the 15 percent standard accomplishes these goals, as it would encompass those entities providing substantial quantities of programming that also have the requisite investment in the station and would exclude those entities that provide only small amounts of programming and that therefore do not have

[117] *See Attribution Further Notice*, 11 FCC Rcd at 19902-03.

[118] *TV Local Ownership Order*, at Section IV.A.

[119] *See Attribution Further Notice*, 11 FCC Rcd at 19903.

[120] Of course, an intra-market LMA that involves more than 15 percent of a broadcast station's total programming is *per se* attributable without regard to whether there is any accompanying financial investment.

potential to exert significant influence over licensees.[121] Moreover, it is a standard that we have experience in applying, as it is the standard currently used in determining whether an intra-market radio LMA is *per se* attributable, and it is the standard that will be used in determining whether an intra-market TV LMA is *per se* attributable. Under our new rule, an intra-market LMA is *per se* attributable if it involves more than 15 percent of a station's programming. In contrast, an inter-market LMA is attributable, under the EDP rule, only if it involves more than 15 percent of a station's programming and if the LMA is accompanied by a financial investment that is above the 33 percent investment threshold. It would sweep too broadly to attribute inter-market LMAs that are unaccompanied by the requisite financial investment. The substantial investment provides additional incentive and ability for influence or control. Finally, it is a clear and administratively simple standard to apply, promoting our goal of making the EDP rule a bright-line test.

57. Fox, in arguing that we should not adopt an EDP rule for program suppliers, argued that we have failed to identify a sufficient rationale for treating non-controlling equity or debt interests held by program suppliers more restrictively than other kinds of business relationships that may confer influence, such as those with lenders. According to Fox, lenders may have substantial influence over station operations, particularly when the borrower is in default, and most network affiliation agreements requiring in-pattern clearance would be attributable if "influence" is the test of attribution.[122] We disagree. A clear rationale exists for not attributing network affiliation agreements not accompanied by the requisite investment or debt agreements not involving program suppliers or same-market broadcasters. We do not attribute all network affiliation agreements because, absent a substantial equity or other investment that may create accompanying obligations, the affiliate is free to negotiate with the network for particular terms.[123] With respect to lenders, such as banks, our experience indicates that their motivation is return on their investment, and that they do not have the same incentive as the networks to influence the programming or other core operational choices of the licensee.

58. While some commenters strongly argued that applying the EDP rule to program suppliers would curb investment in broadcast stations and possibly hurt weaker UHF stations and might deter investment that would facilitate the conversion to DTV, they do not provide empirical evidence to support this argument. We also note that the rule does not preclude investment, but merely provides that investments over a certain level will be deemed presumptively attributable. Networks are therefore free to invest in their affiliates, subject of course to the applicable multiple ownership rules. Moreover, the EDP rule does not attribute investments, even those by networks in their affiliates, which fall below the 33 percent threshold. Thus, a major program supplier may have an investment that is equivalent to 32 percent of the total assets of a station to which it supplies programming in excess of the 15 percent standard. This would comply with all EDP limits and the interests would not be attributable. In addition, the EDP rule does not affect investments by entities other than major program suppliers or same-market

[121] Staff analysis indicates that, as of the date of adoption of this Report and Order, the 15 percent standard would include the four major networks, HSN, Paxnet, Telemundo, Univision, and WB but would not include UPN. Our analysis is based on the assumption that the stations to which programming is provided are broadcasting 24 hours per day or 168 hours per week. Defining major program suppliers based on the percentage of total programming they provide stations is a flexible measure that will accommodate changes in program suppliers' status in the future.

[122] Comments in response to Attribution Further Notice of Fox at 4-5.

[123] *See* 47 C.F.R. § 73.658.

media entities. Accordingly, we believe that the EDP rule will not curb investment, deter new entry, or curb the conversion to DTV.

59. We have decided to focus the program supplier prong of the EDP rule on major program suppliers, which as defined herein would include the major broadcast networks, for a number of reasons. Several recent cases triggering concerns with respect to substantial nonattributable investments have involved the major broadcast networks.[124] Additionally, network affiliates have underscored our concerns in this area and supported applying the EDP rule to these networks. In response to the *Attribution Notice*, network affiliates have expressed concerns that the current attribution exemptions have allowed the broadcast networks to extend their nationwide reach by structuring nonattributable deals in which the networks effectively exert significant influence, if not control, over licensees.[125] According to NASA, which, in its Comments in response to the *Attribution Further Notice*, supported adoption of the equity or debt proposal and its application to networks, the combination of less-than-controlling interests and network affiliation potentially gives a network undue influence over a licensee's programming and other operations in a number of ways: (1) less-than-controlling interests create fiduciary obligations on the majority owner that might require the owner to favor the network; (2) long-term affiliation agreements which are a *quid pro quo* for their investments confer influence on networks; (3) affiliation agreements can contain terms that include significant financial disincentives to carry local programming or other provisions that inhibit an affiliate's flexibility to carry non-network programming at times the networks provide programming; and (4) the affiliate's willingness to accept those terms is likely to be influenced by any financial interests the network holds in the affiliate.[126] According to NASA, "[g]iven the effects of network ownership and the use of investments to gain affiliations, less-than-controlling network ownership of a station is functionally equivalent to an attributable ownership interest. In many cases, because of the dependency of affiliates, the network may have significantly more influence than a typical attributable owner."[127] NASA also noted that the networks have every reason to exploit the attribution exemptions because they are approaching their national ownership limits.[128]

60. We have decided not to sweep so broadly as to include all entities from which a licensee obtains programming but only to include those entities that provide more than 15 percent of a station's weekly total programming. We believe, based on the record, that this percentage will not include most

[124] *See, e.g., BBC License Subsidiary L.P (WLUK-TV)*, 10 FCC Rcd 7926 (1995); *BBC License Subsidiary L.P. (KHON-TV et. al)*; 10 FCC Rcd 10968 (1995).

[125] *See* Consolidated Comments in response to Attribution Notice of AFLAC Broadcast Group ("AFLAC") at 15-19; Consolidated Reply Comments in response to Attribution Notice of AFLAC at 3-4; Reply Comments in response to Attribution Notice of Network Affiliated Stations Alliance ("NASA") at 2-3, 6-7.

[126] Comments in response to Attribution Further Notice of NASA at 2-3.

[127] *Id.* at 3.

[128] Comments in response to Attribution Further Notice of NASA at 4. The national television ownership rules permit common ownership of television stations with a reach of 35 percent of the country. 47 C.F.R. § 73.3555(e). According to NASA, when it filed its comments in 1996, CBS owned stations with coverage of more than 31 percent of the country and Fox more than 34 percent. Were Fox's minority interests attributed at that time, it would have covered more than 37 percent. *See* Exhibit 1 to Comments in response to Attribution Further Notice of NASA.

syndicators, which apparently provide less than 15 percent of a station's total weekly programming.[129] We have not been presented evidence that smaller program suppliers and syndicators that do not provide substantial quantities of programming to stations have the potential to wield significant influence such that their investment should be attributed. For example, King, in arguing for application of the EDP rule to networks, argued that there is no evidence that syndicators have engaged in the kinds of arrangements and transactions that gave rise to the proposal and no reason to believe that the nature of the contractual arrangements between a syndicator and a station are likely to confer on the syndicator the realistic potential to significantly influence programming or other core operations of the station.[130] Under these circumstances, there appears to be no real need to impose constraints on investments by these syndicators and by new networks that do not provide the triggering amount of programming. If it appears that problems arise in these areas, we can later broaden the EDP rule.

61. Investment Thresholds. Under the EDP rule, where the creditor or equity interest holder is a same-market broadcaster or major program supplier, as defined herein, in addition to applying the existing attribution criteria, we would attribute any financial interest or investment in a station or other media outlet where it exceeds 33 percent of the total assets (debt plus voting, non-voting and preferred stock) of the licensee. We intend to aggregate the equity and debt interests of such an investor (including both non-voting stock in whatever form it is held and voting stock) in a licensee or other media outlet for purposes of applying the investment threshold. Thus, when the investor's total investment in the licensee or other media outlet, aggregating all debt and equity interests, exceeds a specified threshold percentage of all investment in the licensee (the sum of all equity plus debt), that investment would be attributable. In aggregating the different classes of investment, equity and debt, we intend to use total assets (debt plus voting, non-voting, and preferred stock) as a base.[131] We will not apply the percentage threshold

[129] In its Comments in response to Attribution Further Notice, NASA noted that, unlike networks, which can supply up to 75 percent of an affiliate's programming, most program suppliers provide less than 10 percent of a typical customer's programming. According to NASA, there is little reason to be concerned about such programmers, because their potential influence is relatively modest, even if they hold non-attributable interests in stations. However, affiliates depend on networks for large parts of their broadcast day and this relationship severely diminishes affiliates' ability to make independent programming decisions. Comments in response to Attribution Further Notice of NASA at 7-8.

[130] Comments in response to Attribution Further Notice of King at 1-5. Indeed, because stations pay the program supplier in the case of syndication agreements (unlike network affiliation agreements where the network pays the station), King noted that "it is structurally impossible for a syndicator to purchase the power to influence station decisions." Comments in response to Attribution Further Notice of King at 4.

[131] For example, in the hypothetical case of a broadcast company with $100,000 of total assets, and an investor who owns 34 percent of these total assets, the investment may take the form of $30,000 of equity and $4,000 of debt in the broadcast company, or alternatively, the investment may take the form of $4,000 of equity and $30,000 of debt in the broadcast company. In either case, the investors owns a total of 34 percent of the total asset value of the firm, and if the investor is also a program supplier or same-market media entity, then the EDP rule would be triggered. In the *Attribution Further Notice*, ¶ 22, we referred to the sum of all equity and all debt of the licensee as "total capitalization." We now use the term, "total assets," which we believe is a more rigorous accounting term for the aggregate of all equity and all debt and which refers to the total asset value of the licensee. Our intent, however, remains the same. That is, the sum of all equity and all debt of the licensee will be used as a base when we aggregate different classes of investment held by an investor for purposes of determining whether the aggregate limit is exceeded. In the *Attribution Further Notice*, we sought comment as to whether preferred stock should be treated

separately to debt and to equity interests because this could lead to distortions in applying the EDP rule, depending on the percentage of total assets that each class of interests comprises. For example, were we to apply the percentage thresholds separately, a company with only 10 percent of its capital from debt would be attributable to a creditor providing only 3.4 percent of the company's total assets, while any equity holder providing 32 percent of the total capital would be nonattributable.

62. The FCC has recognized that holding voting stock in sufficient quantities confers the ability to exert influence or control over the licensee. Our decision to expand our focus beyond voting stock to nonvoting stock and debt is buttressed by academic literature.[132] Nonvoting stock and debt may now be used to control or influence a licensee in a significant manner, especially when coupled with another meaningful relationship or when held by someone that has the incentive to influence the station or media entity.[133] There is an incentive for licensees and other entities that face regulatory constraints on their acquisition of voting stock and other currently attributable interests (*e.g.*, networks that face the 35 percent national reach cap) to seek to combine currently non-attributable investments with contractual rights in such a manner so as to gain significant influence,[134] and we believe that the current attribution exemptions have afforded such entities the ability to do so. Accordingly, the EDP rule examines not only the investment in voting stock but also nonvoting equity and debt in order to limit the ability of such entities to circumvent the attribution rules.

63. We have decided to set the threshold at 33 percent, as proposed in the *Attribution Further Notice*.[135] Some commenters have advocated a higher threshold, while others have advocated a lower threshold. ABC stated that a 50% threshold, rather than 33%, more realistically identifies the type and level of interest that conveys a realistic potential to control the core operations of a licensee. Paxson argued for a 25% benchmark, but only for the 4 major networks. MAP advocated a 20 percent benchmark. Viacom agreed with 33% in cases where the investor is contractually restricted from influencing budget, hiring and programming decisions, but argues for a 10% benchmark when contractual safeguards are not present. Viacom believes that an investment of even 10% of the capitalization of a station, particularly if coupled with the ability to influence station operations, carries as much influence as a 10% voting stake. CBS stated that the threshold should be set no lower than 33% to avoid

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as equity or as debt for purposes of applying the threshold. *See Attribution Further Notice*, at ¶ 22. We believe that this issue will not be significant in most cases since we aggregate equity and debt. However, in an instance where it may be relevant, we will presume that nonvoting stock should be treated as equity, but we reserve the right to treat preferred stock as debt in an appropriate case where the stock has more of the indicia of debt.

132 R.W. Kopcke and E. Rosengren, eds., *Are the Distinctions between Debt and Equity Disappearing*, Federal Reserve Bank of Boston, Conference Series # 33 (1989).

133 *See, e.g.*, DOJ Letter, at 12-14.

134 See G.T. Garvey and P.L. Swan, *The Economics of Corporate Governance: Beyond the Marshallian Firm*, Journal of Corporate Finance 1, 2 (1994), which argues for a recognition that different stakeholders influence corporate governance.

135 *See Attribution Further Notice*, 11 FCC Rcd at 19906.

prohibiting relationships the Commission has already deemed permissible.[136]

64. We believe that a 50 percent threshold would be inappropriately high. Our goal is not merely to attribute interests with the potential to control but also those with a realistic potential to exert significant influence. On the other hand, the suggested thresholds of 25 percent or 10 percent seem too low. In setting the threshold for attribution of these newly attributable interests, we want to be cautious not to set the limit so low as to unduly disrupt capital flow to broadcasting. In addition, we believe that the threshold for attribution of nonvoting interests should be substantially higher than the attribution level for voting interests, which give the holder a ready means to influence the company. The proposed 33% threshold seems to be an appropriate and reasonable attribution threshold. We note that we have discretion to exercise our judgment in setting a percentage threshold in this regard and to draw an appropriate line, a challenging yet inevitable task for government agencies. We have employed a 33 percent benchmark applied in the context of the cross-interest policy, and that particular benchmark does not appear to have had a disruptive effect.[137] In *Cleveland Television*, the Commission held that a one-third non-voting preferred stock interest by a broadcaster in another station in the same market conferred "insufficient incidents of contingent control" to violate the multiple ownership rules or the cross-interest policy, and that the holders, by virtue of ownership of the non-voting preferred stock interest would not retain the means to directly or indirectly control the station.[138] More recently, we have applied *Cleveland Television*'s 33 percent threshold in *Roy M. Speer*, where we limited the non-attributable equity holdings of a same-market television licensee in another local television station to 33 percent.[139] We will use this threshold in applying the EDP rule but note that we could adjust the threshold later, if warranted.

65. We recognize that the attributable status of a certain investment could change, based, for example, on a change in the firm's assets, resulting in the investor's interests dropping below the 33

[136] Comments in response to Attribution Further Notice of ABC at 8, Paxson at 39, Viacom at 8, n. 6, CBS at MAP at 17-20.

[137] *See Cleveland Television Corp.*, 91 FCC 2d 1129, 1132-35 (Rev. Bd. 1982), *review denied*, FCC 83-235 (1983), *aff'd*, *Cleveland Television Corp. v. FCC*, 732 F.2d 962 (D.C. Cir. 1984) ("*Cleveland Television*"). In its Comments in response to Attribution Further Notice, MAP argued that the factual finding in *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *review denied*, FCC 83-235 (1983), cited by the Commission in the *Attribution Further Notice*, ¶ 23, was rejected by the Court of Appeals, *Cleveland Television Corp. v. FCC*, 732 F.2d 962 (D.C. Cir. 1984) and that the case therefore stands for the proposition that a 33 percent nonvoting interest does give control to the investor, even though MAP concedes that the Court of Appeals upheld the Commission's decision. Comments in response to Attribution Further Notice of MAP at 18. Contrary to MAP's contention, however, the Court specifically upheld the Commission's determinations that the holdings at issue did not constitute a prohibited cross-interest. First, the Court held that the holder of one-third of a corporation's equity does not constitute working control as a matter of law and that the Commission reasonably determined that the preferred stock holdings did not represent a controlling interest subject to the multiple ownership rules. 732 F.2d at 967. While the Court did note, as MAP points out, that the preferred stockholdings did not constitute a "merely passive interest," the Court then nevertheless upheld the Commission's determination that the 33 percent preferred stockholdings did not constitute a "meaningful relationship" under the cross-interest policy and noted that the Commission properly exercised its discretion to make such a determination. *Id.* at 971-72.

[138] *Cleveland Television*, 91 FCC 2d at 1132-35.

[139] 11 FCC Rcd 18393, 18442-43 (1996), *on recon.*, 13 FCC Rcd 19911 (1998).

percent threshold, or vice versa.[140] We will require parties to maintain compliance with the attribution criteria as any such changes occur. Where sudden, unforeseeable changes take place, however, we will afford parties a reasonable time, generally one year,[141] to come into compliance with any ownership restrictions made applicable as a result of the change in attributable status. Finally, we note that we have conditioned a number of recent cases that have raised similar concerns on the outcome of this proceeding. We intend to issue separate orders, as necessary, to apply the EDP rule to any cases that have been conditioned on the outcome of this proceeding.

C. Time Brokerage Agreements or LMAs

1. *Background*

66. An LMA or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming.[142] Currently, we do not attribute television LMAs, and, accordingly, these relationships are not subject to our multiple ownership rules. In the radio context, however, time brokerage of another radio station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours results in attribution of the brokered station to the brokering licensee for purposes of applying our multiple ownership rules.[143]

67. In the *Attribution Further Notice*, we incorporated the tentative proposal, initially set forth in the *Local Ownership Further Notice*,[144] to attribute television LMAs based on the same principles that currently apply to radio LMAs.[145] Thus, time brokerage of another television station in the same market

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140 Such a change in the attributable status of an investment is also possible under our current attribution rules and the cross-interest policy.

141 This approach of permitting one year to come into compliance with the multiple ownership rules tracks our general approach with respect to non-grandfathered interests discussed in Section III.I. *infra.*

142 *TV Local Ownership Further Notice,* 10 FCC Rcd at 3581-82. *See* 47 C.F.R. 73.3555(a)(4)(iii). As noted above, note 8, *supra*, for purposes of applying the radio LMA rules, the Commission's current rules define time brokerage as "the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." 47 C.F.R. § 73.3555(a)(4)(iii).

143 *See* 47 C.F.R. § 73.3555(a)(3)(i).

144 *TV Local Ownership Further Notice*, 10 FCC Rcd at 3583-84.

145 While we proposed to use a fifteen percent benchmark as in radio, we asked whether there are differences between radio and television services that would justify applying a different percentage to television LMAs for purposes of determining whether to attribute them. *Attribution Further Notice*, 11 FCC Rcd at 19908. We also requested quantitative information on the number and characteristics of existing television LMAs, and asked whether we can draw general conclusions about LMAs and whether there are classes or categories of LMAs that should be subject to different attribution treatment. *Id.* at 19910. Further, we issued a Public Notice requesting all parties to all existing LMAs to provide to the Commission by July 8, 1997 certain factual information regarding the terms and characteristics of these agreements. This information is intended to supplement the record in this attribution proceeding and in other rulemaking proceedings currently pending before us that relate to the treatment of television

for more than fifteen percent of the brokered station's weekly broadcast hours would be attributable and would count toward the brokering licensee's national and local ownership limits.[146] We specifically proposed to count attributed television LMAs in applying our other ownership rules, including, for example, the broadcast-newspaper cross-ownership rule,[147] the broadcast-cable cross-ownership rule,[148] and the one-to-a-market rule (or radio-television cross-ownership rule).[149]

2. *Comments*

68. Most commenters addressing this issue supported our proposal to attribute television LMAs based on the same principles that currently apply to radio LMAs.[150] For example, ABC contended that the justification presented by the Commission in the radio LMA rule -- *i.e.*, that attribution of radio LMAs is necessary to prevent the use of time brokerage to circumvent the local ownership rules -- supports adoption of a parallel attribution rule for television LMAs.[151] Bahakel contended that the current non-attributable status of LMAs undercuts the local market ownership limits,[152] while BET argued that the Commission's proposal addresses the dual problems of evasion of the station ownership limits through the use of LMAs and the potential undue concentration of programming control among a few group television owners.[153]

69. Many parties agreed with our tentative conclusion that television LMAs should be attributable

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LMAs and ownership rules. *Public Notice*, DA 97-1246, "Commission Seeks Further Information Regarding Television LMAs" (June 17, 1997). *See* ¶¶ 81-82, *infra*, for a discussion of the information filed by the parties in response to this Public Notice.

146 *TV Local Ownership Further Notice*, 10 FCC Rcd at 3583-84.

147 47 C.F.R. § 73.3555(d).

148 47 C.F.R. § 76.501(a).

149 47 C.F.R. § 73.3555(c).

150 These commenters included ABC, BET, Bahakel Communications ("Bahakel"), Centennial Communications, Inc. ("CCI"), Retlaw Enterprises, Inc. ("Retlaw"), Westwind Communications, L.L.C. ("Westwind") and, with certain caveats, Post-Newsweek Stations, Inc. ("PNS"), SJL Communications, Inc. ("SJL"), Viacom, Saga Communications, Inc. ("Saga"), and MAP.

151 Comments in response to Attribution Further Notice of ABC at 10.

152 Bahakel pointed out that LMAs allow television broadcasters to effectively control and program two stations in the same market, which is unfair to those who comply with the rules by controlling and owning only one station in a market. Comments in response to Attribution Further Notice of Bahakel at 2.

153 Comments in response to Attribution Further Notice of BET at 5-6.

because they confer significant influence over the programming of the brokered party's station.[154] MAP contended that television LMAs, like radio LMAs, result in a diminution of voices and viewpoint diversity.[155] Retlaw declared that television LMAs should be recognized as conferring a degree of control and influence that warrants attribution, and that holding otherwise would be "completely and inexplicably inconsistent" with the Commission's earlier findings with regard to radio.[156]

70. MAP also argued that the contention that LMAs may rescue struggling stations is irrelevant for the purposes of the ownership rules. Since the recent market for the purchase of stations has been strong, it argued, it is likely that in many LMA situations the licensee could have found another buyer, thereby maintaining the same number of voices. Further, according to MAP, the importance of tight, effective attribution of same-market LMAs is magnified in light of the recent and ongoing relaxation of broadcast ownership rules. MAP argued that, because these struggling stations many times present the best, most affordable avenue for entry by minority and female owners, allowing licensees to enter into LMAs works against the Commission's "longstanding goals of promoting equal opportunity in broadcasting."[157]

71. Viacom suggested a variation of our proposal to attribute television LMAs. Viacom advocated that an LMA be defined as a right, evidenced by a formal contract or *de facto* actions, of one broadcaster to direct or participate in the programming decisions of another broadcaster with respect to

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[154] *See, e.g.*, Comments in response to Attribution Further Notice of Saga Communications, Inc. ("Saga") at 6-8. Saga contended that television LMAs are not equivalent to radio time brokerage agreements ("TBAs"), asserting that, over time, the Commission permitted TBAs to evolve from the brokering of a small portion of a licensee's potential into LMAs, whereby a single broker was allowed to purchased all or almost all of the 168 hour broadcast week of a station. According to Saga, the Commission has tacitly permitted diminution of television licensee responsibility to that of merely controlling the programming that the broker presents on the station. Saga also argued that LMAs have not served the public interest and have been used by some broadcasters to circumvent their public interest obligations. *See also* Reply Comments in response to Attribution Further Notice of SJL at 4-6; Comments in response to TV Local Ownership Notice of MAP at 28-29.

[155] MAP noted that a recent tally of the top 100 markets found 40 LMAs in 35 markets. MAP maintained that all of these LMAs violate the intent of the duopoly rule, *i.e.*, to maintain diversity of local television outlets by preventing one entity from owning two out of a limited number of local outlets. MAP charged that the Commission's failure to attribute LMAs allows this violation. MAP also asserted that LMAs give the holder nearly total editorial control over the licensee's programming, "at least for the duration brokered." MAP argued that this makes LMAs "another powerful weapon, which has been tacitly endorsed by the Commission," to evade multiple and cross ownership limits. Comments in response to Attribution Further Notice of MAP at 20.

[156] Retlaw also asserted that LMAs and similar agreements that entail operational control over the programming, advertising and day-to-day management of a brokered station constitute a form of influence that minimizes, not enhances, diversity. Although Retlaw stated that it understands that certain business efficiencies ultimately can be achieved by such combinations, it contended that LMAs perpetuate control without legal ownership, and, as such, remove an independent voice from the marketplace. Reply Comments in response to Attribution Further Notice of Retlaw at 6. *See also* Reply Comments in response to Attribution Further Notice of Bahakel at 9-10; Reply Comments in response to Attribution Further Notice of Westwind at 11-12; Comments in response to Attribution Further Notice of CCI at 4.

[157] Comments in response to Attribution Further Notice of MAP at 21-22.

more than 15 percent of that broadcaster's total weekly broadcast hours, "averaged over a rolling six months."[158] Viacom argued that television broadcasters that hold 10 percent or more of a station's capitalization and that broker that station pursuant to an LMA should be attributed ownership of the station, even if the brokered station may be in a different market than the brokering station. For two stations that operate in the same market, Viacom advocated a *per se* rule that the mere existence of an intra-market LMA (at the 15 percent threshold, as specified in Viacom's definition of LMA) would suffice to create a cognizable interest in the brokered station, "regardless of the fact of or level of financial investment."[159]

72. DOJ noted that, under the antitrust laws, LMAs are quite similar, in their effect on competition, to station ownership.[160] It stated that, in situations where the brokering station controls the sale and pricing of a significant portion of the licensee station's advertising inventory, it is likely to consider the licensee station to be "owned" by the brokering stations for purposes of its merger analysis. Accordingly, DOJ views it as appropriate to attribute television LMAs for purposes of applying local television ownership restrictions.[161]

73. Some caveats were sounded by commenters that otherwise were generally in favor of adopting a television LMA attribution rule. For example, SJL Communications, Inc. ("SJL") argued that attributing LMA arrangements, without concurrently allowing television duopolies, would deprive the public of the significant benefits that LMAs can provide and would violate Congressional intent.[162] In addition, NTIA argued that the FCC is not in a position to promulgate a firm LMA attribution rule at this time because it lacks basic, systematic evidence about the prevalence of television LMAs and their effect on the marketplace.[163] NTIA argued that although applying the radio rule to television LMAs would be an acceptable first step toward promulgating a "firm LMA attribution rule," the radio and television markets are "likely to be sufficiently different" so that grafting the 15 percent radio rule onto the television marketplace should only be an interim measure. NTIA recommended that the Commission conduct a

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[158] Viacom stated that such a definition would not encompass producers and distributors of syndicated programming. Comments in response to Attribution Further Notice of Viacom at 11.

[159] Viacom refers to its comments in the local ownership proceeding, in which it urges adherence to this *per se* attribution except where the brokered station affiliates with a new network, or is a failing or failed station. *Id.* at 14 (emphasis added).

[160] DOJ Letter at 22. DOJ stated that its analysis of the ownership limits at issue in the Commission's broadcast attribution proceeding and local and national ownership proceedings considers only the competitive effects of those limits. *Id.* at 7.

[161] *Id.* at 22.

[162] According to SJL, the depth and extent of time broker involvement in the business of the brokered station "mocks the notion" that such an interest is not attributable. *See* Comments in response to Attribution Further Notice of SJL at 15-18.

[163] NTIA Letter at 11. With respect to NTIA's comments, we note that we issued a Public Notice requesting all parties to all existing LMAs to provide certain factual information regarding the terms and characteristics of these agreements. *See* n. 145, *supra*. *See* ¶¶ 81-82, *infra*, for a discussion of the information filed by broadcasters in response to this Public Notice.

thorough survey of television LMAs as a prelude to establishing a final rule.[164]

74. Commenters opposed to attributing LMAs generally did not disagree that LMAs confer significant influence over the programming of the brokering party's station, but either denied that LMAs can have negative competitive or diversity effects or argued that their public interest benefits outweigh these other considerations.[165] For example, Pappas and Paxson both emphasized that Congress, in the 1996 Act, praised the public interest benefits of LMAs, and stated that the Commission has long recognized that LMAs result in significant public benefits.[166] Paxson asserted that its participation in a number of radio and television LMAs has advanced the Commission's twin regulatory goals of providing new service (with attendant diversity and competition) and minority ownership.[167]

75. Applicability to other ownership rules. Both BET and MAP favored attributing LMAs for purposes of the national audience reach cap.[168] BET argued that attributing television LMAs would subject them to the FCC's ownership rules, thus preventing further television station ownership concentration and stopping attempts to bypass national and local ownership restrictions through LMAs.[169] MAP maintained that LMAs could allow holders to violate the intent of the national ownership caps by combining outright ownership and LMAs to reach over 35 percent of the national audience.[170]

76. Paxson, however, argued that neither radio nor television LMAs should be considered attributable for purposes of Commission ownership restrictions other than the duopoly rules. According to Paxson, the Commission has never treated LMAs as attributable interests for purposes other than the duopoly rules, and there is no evidence that such treatment has created abuses or adversely affected

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164 NTIA Letter at 11.

165 For example, Diversified Communications ("Diversified") denied that LMAs can have negative competitive or diversity effects, arguing that the Commission has failed to present evidence in this proceeding that television station licensees or brokers are abusing television LMAs in such a manner that competition or programming diversity are being adversely affected by the use of LMAs. Comments in response to Attribution Further Notice of Diversified at 5-6. *See also* Reply Comments in response to Attribution Further Notice of Pappas at 10-11; Comments in response to Attribution Further Notice of Glenwood at 2-3.

166 *See* Comments in response to Attribution Further Notice of Pappas at 6-7; Comments in response to Attribution Further Notice of Paxson at 27.

167 Comments in response to Attribution Further Notice of Paxson at 28. *See also* Comments in response to Attribution Further Notice of Glencairn, Ltd. and WPTT, Inc. ("Glencairn") at 2-7. Glencairn argued that the Commission fails to take into account the benefits LMAs provide and ignores important differences between radio and television programming and operation. Glencairn stated that its LMAs have resulted in tangible public interest benefits, have resulted in more operating television stations in many television markets, and, in the case of Glencairn, have directly contributed to minority ownership. *Id.*

168 Comments in response to TV Local Ownership Second FNPRM and TV National Ownership Notice of BET at 4; Comments in response to Attribution Further Notice of MAP at 20.

169 Reply Comments in response to Attribution Further Notice of BET at 5-6.

170 Comments in response to Attribution Further Notice of MAP at 20.

competition and diversity. In the absence of such evidence, Paxson argued that expanding the attributable status beyond the duopoly rules is unnecessary and would disserve the public interest.[171]

77. Different attribution percentage. Knight-Ridder advocated setting a higher threshold (25 percent of a station's programming) for attribution of television LMAs, arguing that television viewers today have more channels and programming services to choose from than ever before. Knight-Ridder contended therefore that a 25 percent programming attribution threshold for television LMAs would fully protect local diversity and competition, while encouraging innovative and successful combinations between local television stations and other programmers in the community (such as newspapers) that would otherwise be impossible.[172]

78. Paxson argued that television stations should not be attributed based on the same standard as radio LMAs because radio stations generally are programmed entirely on a local basis, whereas many television stations rely on substantial amounts of network and syndicated programming, which would result in the 15 percent standard being "artificially low." To more closely parallel the radio LMA attribution standards, Paxson advocated that any television attribution standards should be based on the amount of "*locally produced*," *i.e.*, excluding network and syndicated, programming provided by the broker.[173]

79. Responses to Public Notice. As noted above, we issued a Public Notice requesting all parties to all existing television LMAs, or time brokerage agreements, to provide certain factual information regarding the terms and characteristics of these agreements.[174] We requested this information to supplement the record in this attribution proceeding and in other rulemaking proceedings currently pending before us that relate to the treatment of television LMAs and ownership rules.

80. Specifically, we requested information as to the number of outstanding television LMA contracts; the terms of the LMA contracts, including the origination date, duration and renewal options; the market characteristics of the brokering and brokered station, such as the Nielsen rankings and market shares of the broadcast stations, and whether the contracting parties reside in the same, adjacent or non-adjacent markets; the nature of the programming aired on the leased broadcast time, including affiliations; the degree of overlap between brokered and brokering stations; and any other relevant information, including any public interest benefits or efficiencies resulting from LMAs that the parties wish to bring to our attention.[175]

81. Of the 114 LMAs, or time brokerage agreements, reported, there are 74 in which the brokering and brokered stations are located in the same market, nine in which the two stations are in adjacent markets, and 28 in which the brokering and brokered stations are located in non-adjacent markets.

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[171] Comments in response to Attribution Further Notice of Paxson at 30.

[172] Comments in response to Attribution Further Notice of Knight-Ridder at 7-8.

[173] Comments in response to Attribution Further Notice of Paxson at 29.

[174] *Public Notice*, DA 97-1246, "Commission Seeks Further Information Regarding Television LMAs" (June 17, 1997).

[175] *Id.*

In addition, three of the reported LMAs are located in Puerto Rico. Although most of the brokering stations are affiliated with one of the top four networks (ABC, CBS, FOX and NBC), the brokered stations tend to be affiliated with either UPN or WB or are unaffiliated or have yet to come on the air.[176]

82. The responses received to the questionnaire also provide information supporting our view that LMAs accord the broker significant influence that warrants attribution. First, the LMA, or time brokerage agreement, typically brokered most, if not all, of the brokered station's broadcast time. The percent of time brokered with both same-market and out-of-market LMA stations averaged 90 percent or greater. Second, LMA contracts tended to have extended maturities, which are renewable in the majority of cases. Same-market LMA contracts averaged seven years in duration, and ranged from one to 21 years, while out-of-market LMA contracts averaged somewhat less at five years, with a range from two to ten years. In addition, a significant number of LMA agreements contained options to purchase the station.[177]

83. Decision. We will adopt a new rule to *per se* attribute television LMAs, or time brokerage of another television station in the same market, for more than fifteen percent of the brokered station's broadcast hours per week and to count such LMAs toward the brokering licensee's local ownership limits. We have determined in the *TV National Ownership Order* that we will not count same-market LMAs towards the brokering licensee's national ownership limits, as that would constitute double-counting these LMAs.[178] We will count inter-market time brokerage agreements where they come under the EDP rule for purposes of the national ownership limits. We believe that the rationale for attributing LMAs set forth in the *Radio Ownership Order*,[179] -- *i.e.*, to prevent the use of time brokerage agreements to circumvent our ownership limits -- applies equally to same-market television LMAs. We will determine whether an LMA involves a "same market" station based upon the revised duopoly rule's standards. Thus, if the brokered station is in the same DMA as the brokering station, the LMA is "same market" for purposes of determining compliance with the ownership rules.[180] If the LMA is found to be a same-market LMA, we will then apply the other multiple ownership rules to see if they are implicated.

84. We note that in the *Radio Ownership Order*, the Commission voiced its concern that substantial time brokerage arrangements among stations serving the same market, combined with the increased common ownership permitted by the revised local rules, could undermine broadcast competition

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[176] FCC staff analysis of data received in response to *Public Notice*.

[177] In the *TV Local Ownership Order*, we update, discuss in greater detail, and evaluate more fully the information provided us in response to the Public Notice, including the information provided on the degree of overlap between brokered and brokering stations as well as the information provided us on the public interest benefits of LMAs.

[178] *TV National Ownership Order*, ¶ 28.

[179] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2788 (1992) ("*Radio Ownership Order*"), *recon.*, *Memorandum Opinion and Further Notice of Proposed Rule Making*, 7 FCC Rcd 6387 (1994) ("*Radio Ownership Reconsideration*"), *further recon.*, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7183 (1994) ("*Radio Ownership Second Reconsideration*").

[180] *See TV Local Ownership Order*, at Section IV.A. As discussed in the *TV Local Ownership Order*, we will continue to allow common ownership of two stations in the same DMA if their Grade B contours do not overlap.

and diversity. The Commission therefore decided to preclude that possibility by attributing local time brokerage arrangements, at least until it had some experience with the effect of that new regulatory approach in broadcast markets.[181] We are convinced that the radio LMA attribution rule adopted in that Order has operated successfully to ensure that the goals set forth in the radio ownership rules are not undermined by the existence of unattributed influence over radio stations in the same market. We believe that a similar approach is warranted concerning television LMAs.

85. In the *Attribution Further Notice*, we reiterated our belief that the attribution rules must function effectively and accurately to identify all interests that are relevant to the underlying purposes of the multiple ownership rules and that should therefore be counted in applying those rules.[182] Now, based on our experience with attribution of radio LMAs and the record in this proceeding, we conclude that a stand-alone, or *per se*, rule that attributes a same-market television LMA, or time brokerage of a television station in the same market, for more than 15 percent of the brokered station's weekly broadcast hours is necessary to accomplish this goal.[183]

86. We will count attributed television LMAs toward all applicable broadcast ownership rules, which include the duopoly rule and the one-to-a-market, or radio-television cross-ownership rule.[184] We have determined in the *TV National Ownership Order* that we will not count same-market LMAs towards the brokering licensee's national ownership limits, as that would constitute double-counting these LMAs. We will count inter-market time brokerage agreements attributable under EDP because they are accompanied by the requisite financial investment for purposes of the national ownership limits. Attribution is based on influence or control that should be considered cognizable and defines what we mean by ownership. Indeed, with the exception of radio LMAs, an exception which we eliminate today, ¶ 90 *infra*, our other current attribution rules apply across the board to all the relevant ownership limits. There is no reasonable basis for treating television LMAs any differently.

87. The record in this proceeding supports our decisions to attribute television LMAs and to count attributed radio LMAs toward all applicable radio ownership limits. Our analysis, above, of the

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181 *Radio Ownership Order*, 7 FCC Rcd at 2788.

182 We also stated that, "as importantly, we seek to identify clearly those interests that do not and should not implicate concerns raised by the multiple ownership rules and that should not, therefore, be counted." *Attribution Further Notice*, 11 FCC Rcd at 19898.

183 We believe that such a threshold for *per se* attribution will identify the level of control or influence that would realistically allow holders of such influence to affect the programming decisions of licensees or other core operating functions, while, at the same time, allowing a station the flexibility to broker a small amount of programming through an LMA with another station in the same market without that brokerage rising to an attributable level of influence. We are not adopting NTIA's suggestion that the 15 percent threshold should be only an interim measure. NTIA argued that although applying the radio rule to television LMAs would be an acceptable first step toward promulgating a "firm LMA attribution rule," the radio and television markets are "likely to be sufficiently different" so that grafting the 15 percent radio rule onto the television marketplace should only be an interim measure. NTIA also recommended that the Commission conduct a thorough survey of television LMAs as a prelude to establishing a final rule. We, of course, may revisit this decision if we receive evidence that a different threshold than the one we adopted for radio LMAs is indicated for television LMAs.

184 *See TV Local Ownership Order*; *TV National Ownership Order*.

information submitted by parties to television LMAs in response to our *Public Notice* indicates that television LMAs, or time brokerage agreements, may give the brokering station influence over the programming of the brokered station such as should be recognized as an attributable relationship. Moreover, we agree with most commenters, representing a variety of interests ranging from ABC to the public interest group MAP, that television LMAs, like radio LMAs, permit a degree of influence and control that warrants ownership attribution.[185] We find it particularly noteworthy that commenters that opposed attributing television LMAs did not disagree that such LMAs confer substantial influence over brokered stations. Instead, these commenters argued that LMAs are beneficial and provide diversity benefits, an issue relevant to the question of how much common ownership should be permitted, consistent with our competition and diversity goals, rather than the cognizability of the interest. This issue is being considered in the TV Local Ownership and TV National Ownership proceedings.[186]

88. We also note that, under the EDP rule, above, we will attribute an inter-market time brokerage agreement or LMA (or any other program supply arrangement) that brokers more than 15 percent of a station's programming (*i.e.*, a program supplier, as defined above) when held in combination with more than 33 percent of the total assets (debt plus voting, non-voting and preferred stock) of a station. Prior to the EDP rule, an inter-market LMA would not have been attributed regardless of the level of non-voting equity and debt interests held by the brokering station. With the exception of the EDP rule, we will not attribute television time brokerage agreements between stations in different markets. We disagree with Pappas, which asserted that our proposal to treat television LMAs as cognizable interests must also apply to television network affiliation agreements and argued that, for attribution purposes, there is little substantive difference between an LMA and a network affiliation agreement, in that both involve the provision of television programming and the sale of television advertising time.[187]

89. In the *Radio Rules Order*, the Commission stated that time brokerage agreements involving radio stations licensed to different markets "raise little public interest concern; indeed they can be difficult to distinguish from network affiliation agreements, of which the Commission has long approved."[188] Both

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[185] Of course, a licensee's unauthorized abdication or transfer of control over the station would violate Section 310(d) of the Communications Act, 47 U.S.C. § 310(d). Moreover, with respect to whether an LMA confers control over a station, the Mass Media Bureau found that, in the instance of a single broker that purchased 140 hours out of a station's 168 hours, there was no unauthorized transfer of control under Section 310(d) as the complainant had not documented its allegations that the broker had taken over station operation in a manner outside the ordinary course of time brokerage agreements. *See* Letter to Roy R. Russo, Esquire and Lawrence N. Cohn, Esquire, Counsel, Spanish Radio Network, from Roy J. Stewart, Chief, Mass Media Bureau, Federal Communications Commission, 5 FCC Rcd 7586-87 (1990) ("*Russo*").

[186] *See TV Local Ownership Order*; *TV National Ownership Order*.

[187] To the extent there is a distinction between network affiliation agreements and LMAs, Pappas contended that the potential to exert control and/or influence over a television station's programming is substantially greater under an affiliation agreement. Pappas argued that, for example, there is no Commission rule limiting the amount of time that networks may provide under an affiliation agreement; affiliation agreement preemption and related penalty provisions are substantially more restrictive than such provisions in LMAs; and, more importantly, established networks have nationwide influence that result in stronger control over affiliates than a brokering station could ever attain under an LMA. Comments in response to Attribution Further Notice of Pappas at 12-13.

[188] *Radio Ownership Order*, 7 FCC Rcd at 2788, n. 126.

LMAs and network affiliation agreements clearly confer some level of influence over the programming and commercial time of a licensee. Neither, however, taken alone, constitutes an attributable interest. It is the combination of ownership of a *local* competing media interest *and* programming and direct operational influence via a substantial same-market LMA that raises our concern and drives our decision to attribute such LMAs under our multiple ownership rules. This concern does not arise where there is no such combination of interests, as for example, network affiliation contracts or out-of-market LMAs unaccompanied by substantial investment in the programmed station. It is only when an out-of-market LMA provides more than 15 percent of a station's programming, in addition to holding an investment of more than 33 percent of total assets of the station, that we deem the level of influence sufficient to warrant attribution.[189] Under those circumstances, as discussed more fully in Section III.B. hereof, where substantial investment in the licensee is combined with provision of substantial quantities of programming, we believe that the level of influence is sufficient to warrant attribution regardless of the fact that the programming provider is not a media entity in the same market. And, as we have noted, where the program supply agreement takes the form of a network affiliation agreement, the network, like the out-of-market LMA broker, will have its interest in its affiliate attributed if it invests in the affiliate above the EDP threshold.

90. Modify radio rules. In our *Attribution Further Notice*, we stated that if we adopt our proposal for attributing television LMAs, we would also consider similarly modifying the radio LMA rules (47 C.F.R. § 73.3555(a)(3)), because radio LMAs are currently considered only for purposes of applying the radio duopoly rule (47 C.F.R. § 73.3555(a)(1)), and invited comment on how the radio LMA attribution rules should be modified in this regard.[190] Paxson, the only commenter to address this issue, generally argued against attributing radio or television LMAs for purposes of ownership restrictions other than the duopoly rules.[191] We have decided to adopt our proposal to attribute same-market radio LMAs for purposes of applying our other multiple ownership rules that are applicable to radio stations, including, for example, the daily newspaper cross-ownership rule,[192] and the one-to-a-market (or radio-television cross-ownership) rule.[193] The other attribution rules apply across the board, and there is no reason not to apply attribution of radio LMAs consistently to all applicable radio ownership rules. Accordingly, we will modify our radio LMA attribution rules to reflect this change.[194]

91. Grandfather Newly Attributable Radio LMAs. We are unaware of whether and to what extent

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[189] *See* the discussion regarding attribution of program suppliers holding investments of more than 33 percent of the total assets of the licensee, Section B, *supra.*

[190] *Attribution Further Notice*, 11 FCC Rcd at 19908.

[191] *See* ¶ 76, *supra.*

[192] 47 C.F.R. § 73.3555(d).

[193] 47 C.F.R. § 73.3555(c).

[194] For example, under our modified radio LMA attribution rule, a radio station that brokers more than 15 percent of the programming of another station in the same service (*i.e.*, AM or FM service) in the same market would have the brokered station attributed to it and counted in determining whether it complies with the one-to-a-market rule.

there may be existing intra-market radio LMAs that would violate the newspaper-radio cross ownership rule or the one-to-a-market rule (or radio-television cross-ownership rule). Accordingly, we intend to review the issue of grandfathering in any such existing cases on a case-by-case basis so that we can take account of any equities and particular factual circumstances that inform such cases. We invite any holder of a radio LMA that now finds itself in violation of the radio-television cross-ownership rule or the newspaper-radio cross-ownership rule to bring that case to our attention and seek a ruling on the issue of grandfathering. The new rules will apply to all cases arising after their effective date..

92. Requirement to File TV LMAs. In our *Attribution Further Notice*, we incorporated from the *TV Local Ownership Further Notice* the tentative proposal that attributable television LMAs be filed with the Commission in addition to being kept at the stations involved in an LMA.[195] In the *Radio Ownership Order*, the Commission required that all radio time brokerage contracts be placed in the public inspection files of the stations involved, and that local time brokerage agreements be filed with the Commission within 30 days of execution.[196] The Commission noted that these requirements would impose only a minimal burden on licensees but would permit it and others to monitor time brokerage agreements to ensure that licensees retain control of their stations and adhere to the Communications Act, Commission Rules and policies and the antitrust laws.[197] We believe that these same reasons are valid today with respect to television time brokerage agreements.

93. DOJ supported our proposal for a notification and filing requirement for television LMAs. According to DOJ, the fact that television LMAs (unlike similar arrangements in the radio industry) historically have not been subject to any type of reporting requirement has had the practical effect of limiting scrutiny of such arrangements by either the Commission or antitrust authorities. DOJ urged the Commission to adopt some form of reporting requirement for television LMAs that will allow meaningful review and monitoring of these arrangements by the Commission, and, where appropriate, by antitrust enforcement authorities through a review of materials provided by the Commission.[198]

94. We will require stations involved in television time brokerage agreements (inter-market as well as intra-market agreements) to keep copies of those agreements in their local public inspection files, with confidential or proprietary information redacted where appropriate, and require the licensee that is the brokering station to file with the Commission, within 30 days of execution of such agreement, a redacted copy of any time brokerage agreements that would result in the arrangement being attributed in determining the brokering licensee's compliance with the multiple ownership rules.[199] We will amend our

[195] *See TV Local Ownership Further Notice*, 10 FCC Rcd at 3583. *See* 47 C.F.R. § 73.3613(d).

[196] This requirement parallels the existing provisions of our rules which oblige licensees to file other relevant contractual agreements within 30 days of their execution. *See* 47 C.F.R. Section 73.3613.

[197] *Radio Ownership Order*, 7 FCC Rcd at 2789.

[198] DOJ Letter, at 22-23.

[199] For example, a television station would be required to file a time brokerage agreement with the Commission where: (1) that agreement involves providing more than 15 percent of the weekly programming hours of another television station in the same market (as the agreement would therefore be *per se* attributable), or (2) where that agreement involves providing more than 15 percent of the programming of a station in another market and the

rules accordingly.[200] We note that these provisions impose an affirmative obligation on licensees to determine, in the first instance, whether a particular LMA is attributable (either under the *per se* rule or the EDP rule), and to file the agreement with the Commission if it is.

95. Programming responsibility safeguards. In our *Attribution Further Notice*, we emphasized, as we did in our radio ownership proceeding,[201] "that the licensee is ultimately responsible for all programming aired on its station, regardless of its source," and invited comment on what, if any, specific safeguards we should adopt with respect to television LMAs to ensure a brokered station's ability to exercise its programming responsibility.[202] We believe that attribution of same-market television LMAs, along with our new filing requirements, will subject LMAs arrangements to sufficient scrutiny by competitors, the public and the Commission, that brokering stations will have strong incentives to avoid unauthorized acquisition of control of the brokered station. We remind all parties to LMAs that, as we noted in the *Radio Ownership Order*, "our rules require the licensee to maintain control over station management and ultimate programming decisions, regardless of any time brokerage agreements that may exist."[203]

96. Simulcasting. In our *Attribution Further Notice*, we stated that we would resolve the issue, raised in the *Local Ownership Further Notice*,[204] as to whether the program duplication or simulcasting limits that apply to commonly owned or time brokered radio stations should apply to television LMAs.[205] No commenters addressed this particular question, although some argue generally that LMAs result in duplicative programming.[206] Other commenters disagree, pointing out that, from the perspective of a time broker, time brokerage agreements pay off through the ability to attract additional, new audiences to the brokered station. A duplication of programming would not attract additional audiences, but would merely divide the audience currently enjoyed by the time broker's owned station with the audience of the brokered station.[207]

97. With respect to radio broadcasting, "simulcasting," or program duplication, refers to the

brokering station has an interest in the brokered station that exceeds the EDP threshold.

200 We will amend 47 C.F.R. § 73.3613(d) (filing of radio time brokerage agreements) to include our new requirements for filing television LMAs, and we will delete reference to "contracts relating to the sale of television broadcast time to 'time brokers' for resale" from 47 C.F. R. § 73.3613(e) (contracts and agreements not filed but kept available at the station for inspection upon request by the FCC).

201 *Radio Ownership Reconsideration*, 7 FCC Rcd at 6401.

202 *Attribution Further Notice*, 11 FCC Rcd at 19910.

203 *Radio Ownership Order*, 7 FCC Rcd at 2761, n. 30.

204 *TV Local Ownership Further Notice*, 10 FCC Rcd at 3583.

205 *Attribution Further Notice*, 11 FCC Rcd at 19908.

206 *See e.g.*, Comments in response to Attribution Further Notice of Centennial at 6-7.

207 *See e.g.*, Reply Comments in response to Attribution Further Notice of SJL at 7.

simultaneous broadcasting of a particular program over co-owned stations serving the same market, or the broadcasting of a particular program by one station within 24 hours before or after the identical program is broadcast over the other station.[208] In the *Radio Ownership Order*, the Commission limited simulcasting on commonly owned stations in the same service serving substantially the same area to 25 percent of the broadcast schedule,[209] stating that it saw no benefit to the public from permitting commonly owned same-service stations in the same market to substantially duplicate programming. The Commission reasoned that the limited amount of available radio spectrum[210] could be used more efficiently by other parties to serve competition and diversity goals, and that substantial same-service simulcasting would not aid economically disadvantaged stations because the audience for the programming in question would be shared by two or more stations.[211]

98. At this time, we will not apply simulcasting limits to television LMAs. We are not aware that broadcasters involved in television LMAs are simulcasting their programming to any significant extent. Moreover, we believe such simulcasting is unlikely to occur because it would most likely work to the disadvantage of the stations engaged in the LMA. We note that television coverage differs from radio, in that there are fewer television stations per market, and those stations cover a larger market area than do radio stations.[212] We assume that if television stations commonly operated under an LMA in the same market simulcast programming, they would split the audience for that programming between themselves, losing the audience for alternative programming to other television stations in that market. Because stations' advertising revenues are generally based on audience share, revenue and basic profits would be negatively affected by such practices. There consequently appears to be a significant market disincentive against simulcasting in the context of same-market television LMAs. To the extent that simulcasting occurs, it may reflect the owner's (or broker') attempt to maximize the audience reach within the DMA. As indicated above, we received no comments specifically addressing this question, nor have we seen any evidence that the concerns with respect to simulcasting by commonly owned or time brokered radio stations apply to television stations operating under LMAs. Should we find evidence to the contrary at a future date, we may, of course, revisit this decision.

99. Grandfather Existing LMAs. In our *Attribution Further Notice*, we stated that if we decided to attribute television LMAs as we proposed in this proceeding, we intended to resolve the issues of grandfathering, renewability and transferability of existing TV LMAs in the separate TV Local Ownership proceeding so that we could evaluate the extent to which grandfathering might be needed based on the

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208 *Radio Ownership Order*, 7 FCC Rcd at 2783, n. 110.

209 *Radio Ownership Order*, 7 FCC Rcd at 2784.

210 When a channel is licensed to a particular community, others are prevented from using that channel and six adjacent channels at varying distances of up to hundreds of kilometers. *Id.*

211 The Commission noted that limited simulcasting, particularly where expensive, locally produced programming such as on-the-spot news coverage is involved, could economically benefit stations and would not so erode diversity or undercut efficient spectrum use as to warrant preclusion. It stated its belief that the restriction it adopted appropriately balanced those competing concerns. *Id.*

212 Television DMAs are generally larger than radio metro markets.

nature of the local ownership rules we adopt.[213] These issues are outside the scope of this proceeding, and, as we noted in the *Attribution Further Notice*, will be resolved in the *TV Local Ownership Order*.

D. Cross-Interest Policy

1. *Background*

100. Overview. The cross-interest policy has been applied to preclude individuals or entities from holding an attributable interest in one media property (broadcast station, newspaper, cable system) and having a "meaningful" albeit nonattributable interest in another media entity serving "substantially the same area."[214] This policy originally developed as a supplement to the multiple ownership "duopoly" rule which prohibited the common ownership, operation, or control of two stations in the same broadcast service serving substantially the same area. Ownership, operation or control as contemplated by this rule was originally defined as actual control or ownership of 50 percent or more of the stock of a licensee. Since this definition did not encompass minority stock ownership, positional interests (such as officers and directors), and limited partnership interests, the cross-interest policy was developed to address the competitiveness and diversity concerns created when a single entity held these types of otherwise permissible interests in two (or more) competing outlets in the same market.[215] In essence, the cross-interest policy filled gaps in our attribution criteria that had become apparent through our case-by-case application of the ownership rules.

101. Through case-by-case adjudication, the following relationships came to be viewed as constituting "meaningful" interests subject to the cross-interest policy: key employees, joint ventures, nonattributable equity interests, consulting positions, time brokerage arrangements, and advertising agency representative relationships.[216] The cross-interest policy did not prohibit these interests outright, but required an *ad hoc* determination regarding whether the nonattributable interests at issue in each case would be permitted.

102. In 1989, after a comprehensive review to assess the continuing need for the cross-interest policy, the Commission issued a *Policy Statement* limiting the scope of the cross-interest policy so that it would no longer apply to consulting positions, time brokerage arrangements and advertising agency representative relationships.[217] The Commission decided that it no longer needed to apply the cross interest policy to those relationships because: (1) the need for the policy had decreased based on new attribution provisions that had superseded it; (2) the costs to the public and the Commission of administering the policy were difficult to justify given the reduced need for continued oversight of these relationships; (3) growth of media outlets had undercut the notion that any single individual or entity could skew competition through the cross-interests at issue; and (4) alternative safeguards, such as antitrust laws,

[213] *Attribution Further Notice*, 11 FCC Rcd at 19910.

[214] *Notice of Inquiry* in MM Docket No. 87-154, 2 FCC Rcd 3699 (1987) ("*Cross-Interest Notice of Inquiry*").

[215] *See Attribution Notice*, 10 FCC Rcd at 3643.

[216] *See Cross-Interest Notice of Inquiry*, 2 FCC Rcd at 3699-3700.

[217] *Policy Statement* in MM Docket No. 87-154, 4 FCC Rcd 2208 (1989) ("*Cross-Interest Policy Statement*").

fiduciary duties and private contract rights were available to curb anti-competitive conduct.[218]

103. Current Aspects of the Cross-Interest Policy. After the *Policy Statement*, three aspects of the cross-interest policy remain in effect:

> (1) Key employee relationships. The cross-interest policy has generally prohibited an individual who serves as a key employee, such as general manager, program director, or sales manager, of one station from having an attributable ownership interest in or serving as a key employee of another station in the same community or market.[219] The application of the cross-interest policy in these situations is premised on the potential impairment to competition and diversity and the apparent conflict of interest arising from the ability of key employees to implement policies to protect their substantial equity interest in the other station.
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> (2) Nonattributable equity interests. The cross-interest policy has also typically proscribed an individual who has an attributable interest in one media outlet from holding a substantial nonattributable equity interest in another media outlet in the same market.[220] The Commission's concern with these relationships has been that the individual could use the attributable interest in one media outlet to protect the financial stake in the other media outlet, thus impairing arm's length competition. (Two or more separate non-attributable interests in a market are not proscribed by this policy, as neither gives rise to the potential to influence station operations that would concern us.)
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> (3) Joint venture arrangements. The cross-interest policy has prevented two local broadcast licensees from entering into joint associations to buy or build a new broadcast station, cable television system, or daily newspaper, in the same market. These joint ventures have triggered cross-interest scrutiny because the successful operation of the joint venture was thought to require a cooperative relationship between otherwise competing stations, and this would impair competition in the local market.[221]

104. Prior Notices. In the *Cross-Interest Notice*, we asked for comments as to whether we should retain our cross-interest policy in these three areas -- key employees, non-attributable equity interests, and

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[218] *Id.* at 2211-13.

[219] *See Cross-Interest Notice*, 4 FCC Rcd at 2035.

[220] Such nonattributable interests might include nonvoting stock, insulated limited partnership interests and minority stock interests in corporations having a single majority stockholder.

[221] We note, however, that certain joint ventures are now covered by our attribution and ownership rules. For example, our ownership rules would now cover the case in which the cross-interest policy was first applied to joint ventures, *Macon Television Co.*, 8 RR 703 (1952). In that case, we found that the cross-interest policy prohibited a joint venture involving two radio stations in the same market from acquiring a television station in that market. Today, each radio station's 50 percent interest in the television station would trigger the Commission's rule governing the common ownership of a commercial radio station and a commercial television station in the same market (one-to-a-market ownership rule). *See* 47 C.F.R. § 73.3555(c).

joint ventures. We also invited comment as to whether we should amend the attribution rules to incorporate the key employee portion of the cross-interest policy. We sought further comment on whether retention of the remaining named components of the cross-interest policy was necessary to prevent anticompetitive practices, whether alternative deterrent mechanisms exist to assure competition and diversity, and whether continued regulation of relationships not specifically addressed by the Commission's attribution rules is necessary. We also questioned whether regulatory oversight of one or more of these interests should be limited to geographic markets with relatively few media outlets. Five comments and reply comments were filed in response to the *Cross-Interest Notice*.[222] The majority of commenters urged the Commission to eliminate the cross-interest policy as it applies to all of these relationships.[223] One commenter, CFA/TRAC, urged the Commission to retain the policy. In the *Attribution Notice*, we sought to update the record with respect to retention of the cross-interest policy in light of changes in the multiple ownership rules and additional changes we were proposing to the attribution rules. In the *Attribution Further Notice*, we sought additional comment as to the effect on our cross-interest policy of our proposed equity/debt plus approach, which would apply to cases raising concerns of competition and diversity normally reflected in the cross-interest policy.[224] We also sought comment on whether the equity/debt plus approach would be preferable to a case-by-case approach, which is used to administer the cross-interest policy. We specifically noted that the bright line approach could provide certainty and minimize regulatory costs.[225]

2. *Comments*

105. Most commenting parties expressly discussing this issue favored eliminating at least portions, if not all of the cross-interest policy. ALTV, Capital Cities/ABC, CBS, CCA, Fox, FOE, M/C, and Group W urged complete elimination of the policy.[226] According to Capital Cities/ABC, the concerns about blunting competitive incentives that are the historical underpinning of the policy can be safeguarded in the context of antitrust enforcement. Capital Cities/ABC also argued that the administrative burdens and uncertainty of *ad hoc* decision making that impede the ability of broadcasters to raise capital outweigh the Commission's concerns where the FCC itself has determined that the interests in question lack the

[222] *See* Comments of CBS, Inc. ("CBS"), National Association of Broadcasters ("NAB"), and Home Shopping Network, Inc. ("HSN"); Reply Comments of Consumer Federation of America and Telecommunications Research and Action Center ("CFA/TRAC"); Capital Cities/ABC.

[223] *See* Comments of CBS at 2; Comments of NAB at 2; Reply Comments of Capital Cities/ABC at 5 (All filed in response to the *Cross Interest Notice*).

[224] *See Attribution Further Notice*, 11 FCC Rcd at 19902-03.

[225] *See Attribution Further Notice*, 11 FCC Rcd at 19907-08.

[226] *See* Comments in response to Attribution Notice of ALTV at 8-9; Comments in response to Attribution Notice of Capital Cities/ABC at 18-19; Comments in response to Attribution Notice of CBS at 16; Comments in response to Attribution Notice of CCA at 11; Comments in response to Attribution Notice of Fox at i-ii and Note 5; Comments in response to Attribution Notice of FOE at 14; Comments in response to Attribution Notice of M/C at 33; Comments in response to Attribution Notice of Westinghouse Broadcasting Company ("Group W") at 10.

potential for influence sufficient to justify attribution.[227]

106. According to CBS, as well as others,[228] retention of the policy is unjustifiable in light of the growth of media outlets, the development of the attribution and ownership rules, other regulatory restrictions and legal remedies, the unnecessary burdens on media transactions, and the overall uncertainty which the policy imposes. They argued that these detriments are not counterbalanced by any benefits. Since the Commission has adopted clear attribution rules based on its judgment as to which interests hold sufficient potential to influence or control a media property's operation to warrant regulatory restriction, CBS stated that there is no reason to retain a separate ambiguous policy to regulate the same kinds of interests. CBS added that although it does not support adoption of the equity/debt plus standard, it would be preferable to the "amorphous" cross-interest policy.[229] Knight-Ridder agreed that the equity or debt plus approach would be preferable to retaining the cross-interest policy.[230] Finally, Cook Inlet urged the Commission not to apply the cross-interest policy where refraining from applying the policy would enable a disadvantaged enterprise to benefit from training or expertise offered by another broadcast licensee.[231]

107. A few commenters either opposed elimination of the cross-interest policy, or urged the Commission not to change the rules. CFA/TRAC supported retaining the current cross-interest policy.[232] NABOB urged retention of the existing attribution rules, but did not specifically mention the cross-interest policy.[233] Finally, TCI stated that it favors the present case-by-case approach.[234]

108. Key Employees. Most commenters who addressed this aspect of the policy supported eliminating the cross-interest policy as it applies to key employees.[235] ALTV, CBS, NAB, and Capital Cities/ABC contended that key employees, particularly in smaller corporations, are frequently also officers,

[227] Comments in response to Attribution Notice of Capital Cities/ABC at 18-19.

[228] *See, e.g.*, Comments in response to Attribution Notice of M/C at 31-32; Comments in response to Attribution Notice of Group W at 10-11.

[229] Comments in response to Attribution Further Notice of CBS at 3, 6.

[230] Comments in response to Attribution Further Notice of Knight-Ridder at 3.

[231] Comments in response to Attribution Notice of Cook Inlet Region Inc. at 17-18.

[232] *See* Comments in response to Cross Interest Notice of CFA/TRAC at 15.

[233] Comments in response to Attribution Notice of NABOB at 10-11.

[234] Comments in response to Attribution Further Notice of TCI at 20.

[235] *See, e.g.*, Comments in response to Attribution Notice of ALTV at 9; Comments in response to Attribution Notice of NAB at 4; Comments in response to Attribution Notice of Capital Cities/ABC at 18-19; Comments in response to Cross Interest Notice of CBS at 18.

directors, or cognizable shareholders and, therefore, are regulated by the current attribution rules.[236] Moreover, CBS contended that to the extent that key employees are not restricted by the attribution rules, they are obligated to act in the best interests of their employer and to avoid potential conflicts of interest. According to CBS, internal conflict of interest policies and common law fiduciary duty and contract remedies ensure this.[237] CBS and FOE maintained that licensees have the incentive to police potential employee conflicts of interest, given the competitive marketplace in which they operate.[238]

109. CFA/TRAC and London Bridge Broadcasting, Inc., on the other hand, urged the Commission to retain the cross-interest policy as it applies to key employees, contending that the influence of key employees on station operations is akin to that of station owners, and therefore they should be treated similarly for purposes of attribution. These parties questioned the efficacy of the conflict of interest policies and other remedies in deterring abuse.[239]

110. Nonattributable Equity Interests. Most commenters urged the Commission to stop applying the cross-interest policy to nonattributable equity interests, questioning the continued need for cross-interest review in light of the amended attribution provisions of the multiple ownership rules.[240] They argued that any residual concerns not covered by the Commission's ownership rules can be deterred by the competitive marketplace as well as remedies provided by private contracts, federal and state antitrust laws, and fiduciary duties and that the *ad hoc* nature of the cross-interest policy imposes administrative burdens and creates uncertainty, impeding the ability of broadcasters to raise capital. According to CalPERS, this uncertainty imposes administrative burdens on investors and impedes the ability of broadcasters to attract equity investment capital because this policy can be invoked to prohibit a seemingly permissible transaction. In contrast, CFA/TRAC urged the Commission to retain the cross-interest policy as it applies to nonattributable equity interests, arguing that this policy continues to serve an important role and that the uncertainty produced by *ad hoc* application of the policy is not as great as other commenters indicate.[241]

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[236] *See* Comments in response to Attribution Notice of ALTV at 9; Comments in response to Attribution Notice of Capital Cities/ABC at 18-19; Comments in response to Cross Interest Notice of CBS at 18; Comments in response to Cross Interest Notice of NAB at 5-6.

[237] *See* Comments in response to Cross-Interest Notice of CBS at 18-19; Comments in response to Cross-Interest Notice of NAB at 5. CBS attached to its comments a copy of its conflict of interest policy.

[238] *See* Comments in response to Attribution Notice of FOE at 15-16; Comments in response to Cross-Interest Notice of CBS at 19.

[239] Comments in response to Cross Interest Notice of CFA/TRAC at 9-13; Comments in response to Cross Interest Notice of London Bridge at 1-2.

[240] *See* Comments in response to Cross-Interest Notice of CBS at 15-17; Comments in response to Cross-Interest Notice of NAB at 5-7; Comments in response to Cross-Interest Notice of HSN at 3-6; Comments in response to Cross-Interest Notice of Cox at 8-13; Comments in response to Cross-Interest Notice of Morgan Stanley at 17-19; Comments in response to Attribution Notice of CalPers at 23; Comments in response to Attribution Notice of EZ Communications, Inc. ("EZ") at 5; Comments in response to Attribution Notice of Goldman Sachs at 11; Comments in response to Attribution Notice of Silver King Communications Inc. ("SK") at 10.

[241] Comments in response to Cross-Interest Notice of CFA/TRAC at 5.

111. Joint Ventures. Most commenters urged the Commission to eliminate cross-interest review of joint ventures. In support of this position, the commenters argued that cross-interest regulation of joint ventures has been largely displaced by the current attribution rules. They maintained that where the interests involved are not attributable, such interests lack the requisite potential for influence to warrant regulatory scrutiny. These parties also asserted that the marketplace is sufficiently competitive to deter abuse in this area, and that the antitrust laws provide an additional safeguard.[242] Only CFA/TRAC disagreed. It argued that continued regulation of joint ventures pursuant to the cross-interest policy is necessary, especially given the Commission's relaxation of the multiple ownership rules. CFA/TRAC questioned whether joint venturers will compete vigorously at all times, and argued that "advertising and promotion practices, sales territories and audience selection -- not to mention cross-interest -- can complement the interests of joint venturers."[243]

3. *Decision*

112. We will eliminate the above noted remaining components of the cross interest policy. Our goals in initiating this proceeding include maximizing the clarity of the attribution rules, providing reasonable certainty and predictability to parties to allow transactions to be planned, and easing application processing.[244] As discussed above, commenters have argued that the vagueness and uncertainty imposed by the *ad hoc* application of the cross-interest policy have chilled investment. As CalPERS argues, this uncertainty impedes the ability of broadcasters to enter into transactions because the policy can be invoked to prohibit a seemingly permissible transaction.[245]

113. Today, we have revised the attribution rules to adopt the EDP rule, a bright line test, which we believe will increase regulatory certainty and reduce regulatory costs. In adopting that rule, we will reach those situations involving formerly nonattributable interests that raised the most concern with respect to issues of competition and diversity, some of which were previously addressed in administering the cross-interest policy. We agree with commenters who argue that adoption of the EDP rule, as well as the existence of the other attribution rules, provides additional grounds for elimination of the cross-interest policy.

114. We note that the EDP rule directly covers concerns treated under the non-attributable interests prong of the cross-interest policy, as it would attribute a substantial nonattributable interest by a media entity in a second media outlet in the same market. We recognize, however, that the EDP rule does not cover all the areas encompassed by the cross-interest policy. It would not cover key employees, for example. We nonetheless believe, as commenters have pointed out, that internal conflict of interest policies, common law fiduciary duty, and contract remedies provide adequate substitutes for our

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[242] Comments in response to Cross-Interest Notice of NAB at 6; Comments in response to Attribution Notice of Capital Cities/ABC at 18-19; Comments in response to Attribution Notice of CBS at 16; Comments in response to Attribution Notice of CCA at 11; Comments in response to Attribution Notice of M/C at 31; Comments in response to Attribution Notice of Group W at 11.

[243] Reply Comments in response to Cross-Interest Notice of CFA/TRAC at 15.

[244] *See Attribution Notice*, 10 FCC Rcd at 3610.

[245] *See* Comments in response to Attribution Notice of CalPers at 23.

administration of the policy with respect to key employees.[246] In addition, many key employees are also officers and directors and are thus already covered by the attribution rules. In any event, we believe that the very small risk of harm to competition by a key employee in an instance not covered by any of these other regulations and remedies is greatly outweighed by the benefits of minimizing our case-by-case approach to transactions and applying bright line tests, such as the EDP test and our other attribution rules.

115. With respect to joint ventures, we believe that application of a cross-interest policy is unwarranted. The ownership and attribution rules define the level of combined ownership that is permissible in the local market. Many joint ventures are already covered by the attribution/ownership rules, and they may also be covered to some extent by the EDP rule. Accordingly, a joint venture between two licensees in a market to acquire additional broadcast entities in the same market may be subject to the radio-television cross-ownership rule or the relevant duopoly rule. As CBS contended, to continue to regulate these interests under a separate policy when many are covered by the attribution rules is redundant. In addition, according to CBS, the *ad hoc* application of the cross-interest policy has "clouded the future of potential joint ventures with uncertainty" regarding their eventual approval by the Commission.[247] We agree that the cross-interest policy as applied to joint ventures is largely subsumed by the application of the current multiple ownership rules. To the extent that the cross-interest policy is not so subsumed, we believe that it should be eliminated. We have made a judgment to limit combined local ownership to certain degrees, as delineated in our local ownership rules. Accordingly, it makes no sense to have a routine additional layer of case-by-case review for those joint ventures that fully comply with those rules. In these cases, the burdens of case-by-case review are not justified for transactions that already comply with the multiple ownership rules. Furthermore, as other commenters noted, the application of the antitrust laws should prevent or remedy any abuses of joint venture relationships not already subject to the multiple ownership rules.[248]

116. In sum, we believe that the regulatory costs and the chilling effects of the cross-interest policy and the benefits of applying a clear and discernable standard outweigh any risks of potential abuses in eliminating the policy. Moreover, many remaining aspects of the cross-interest policy are subsumed under our attribution rules, as revised herein. Of course, as stated above, ¶ 44, supra, we retain the discretion to review individual cases that present unusual issues on a case-by-case basis where it would serve the public interest to conduct such a review.

E. **Joint Sales Agreements (JSAs)**

117. Background. In the *Attribution Notice*, we requested comment on whether, through multiple cooperative arrangements or contractual agreements, broadcasters could so merge their operations as to

[246] *See* Comments in response to Cross-Interest Notice of CBS at 18-19; Comments in response to Cross-Interest Notice of NAB at 5.

[247] Comments in response to Cross Interest Notice of CBS at 23; Comments in response to Attribution Notice of CBS at 17.

[248] Comments in response to Attribution Notice of Capital Cities/ABC at 18-19; Comments in response to Attribution Notice of CBS at 16; Comments in response to Attribution Notice of CCA at 11; Comments in response to Attribution Notice of M/C at 31; Comments in response to Attribution Notice of Group W at 11.